

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 3277 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RS KUMBHARVADIA
VERSUS
STATE OF GUJARAT

Appearance:

MR RR TRIPATHI for Petitioners
MR HH PATEL for Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 15/08/1999

C.A.V. JUDGMENT

1. The petitioners, who are holding the post of

Agricultural Assistants in the Department of Agriculture, Government of Gujarat at Ahmedabad and working at Rajkot Division, by this petition under Article 226 of the Constitution are praying for quashing and setting aside of the order dated 5-12-1994 qua the petitioners and further prayed for direction to the respondents to restore the benefits of higher pay scale which were granted to them under various orders referred in this special civil application. As usual, prayer has also been made for grant of interim relief that is to restrain the respondents from making any recovery from the petitioners No.1, 2 and 25 of the amount of salary paid excess to them. By amendment of the special civil application, prayer has been made for declaring clause 3 (2) of the Government Resolution dated 16-8-1994 to be unjust, arbitrary, illegal and for quashing and setting aside the same.

2. The facts of the case are not in dispute. The petitioners sought inter-division transfer on their own request on account of what they stated of their social and family circumstances. Request made by the petitioners was accepted and they were ordered to be transferred to Rajkot Division on their own request on the dates as mentioned in the writ petition. The State of Gujarat introduced a scheme to extend the benefits of higher pay scale to its employees on completion of 9 years, 18 years and 27 years of the services under the Government Resolution dated 5-7-1991. It is not in dispute that after the Resolution aforesaid the petitioners were granted the benefit of higher pay scale from the respective dates as given out in the statement. However, under the order dated 5-12-1994 the benefits of the higher pay scale given to the petitioners came to be withdrawn. They made a representation against that decision which came to be rejected on 16-12-1996 vide annexure 'E'. Hence, this special civil application before this court.

3. Learned counsel for the petitioners contended that once the benefit of higher pay scale has been given to the petitioners and more so when they have to their credit the qualifying services which makes them eligible for grant thereof, in later point of time, the same could not have been withdrawn. It has next been contended that for the purpose of giving of the benefit of resolution under which the provision has been made for grant of higher pay scale to the employees on completion of the years of services as provided therein their total length of service has to be considered and even if they have been transferred to some other

Division at the loss of seniority they could have been deprived of those benefits. Hence, the impugned orders and the clause of the resolutions, validity of which is challenged in this special civil application is wholly arbitrary and unjustified and in case it is given effect to then the very purpose of introducing the benefit of higher pay scale to remove the stagnation which the employees are facing will become redundant, ineffective and inoperative and the very purpose and object of the same will be defeated. So the beneficial interpretation has to be given to the resolution which extends the benefits and not that it may take away the benefits.

4. Learned counsel for the respondents, on the other hand, strongly opposed this special civil application. It is contended that to give the benefits of higher pay scale there are manifold eligibilities which are to be fulfilled by the employees. Firstly, that they should be eligible for promotion to the next higher post in the channel of promotion. Secondly, they should have the requisite qualifying services to their credit and lastly that they have no adversity in their service record. It is further contended that on the basis of their seniority these benefits are being given and where the senior has unblemished service record he will get the same as rule and routine. To avoid any anomaly in the pay scales the State Government has taken out the subsequent resolutions and orders so that the seniors in the seniority may not suffer the loss or to avoid the creations of anomaly on transfer of the persons in the category from the other Division.

5. Having given thoughtful consideration to the respective contentions made by the learned counsel for the parties, I find substance in the contention advanced by the learned counsel for the respondents. The transfer of petitioners to Rajkot Division was made on their own request. This transfer is at the loss of seniority. The petitioners are to be placed in the seniority list of the Rajkot Division of the category to which they belong as per their dates of transfer. They may have the longer services and they would have been eligible for getting the benefit of higher pay scales but as it is in the order of seniority, and the senior can only be denied these benefits where his service record is not up to the mark, they cannot be permitted to take march over their rights, though they have to their credit nine years services which their seniors do not have. If the interpretation which is given by the petitioners to these resolutions and orders is accepted then seniority will have no significance and force.

Secondly, it is a matter of benefits to be conferred to the employees and where the seniors are not eligible for getting the benefits as they lack necessary length of service to make them eligible for enjoyment of benefits, junior person though may be eligible cannot be given the benefits. To permit this to be done by the respondents, I am satisfied that it may create manifold difficulties, dissatisfaction, heart burning, painfulness and serious grievance amongst the seniors. Anomaly in the pay has to be there in between the junior and senior and senior will start to get the less pay than the junior. This anomaly cannot be removed as seniors will not be entitled for the benefit of the resolution providing the benefits of the higher pay scale to the employees but because of this fixation of pay in the higher pay scale of the juniors this anomaly has arisen and legitimately the seniors can make a grievance. In case this anomaly is removed then what the resultant position will be, though the seniors are not eligible for the benefit of higher pay scales but because of fortuitous circumstances which is the creation of the junior themselves they will get the benefits which is not the object and purpose of the resolution under which this benefit of higher pay scale has been provided. Secondly, it will be very difficult for the authorities to implement it. To overcome all these difficulties in implementation and the possible grievance which can legitimately be made by the seniors the only possible interpretation which could have been and which what it has been given is that the person junior in the concerned Division because of his own request transfer though may have the requisite number of years of service with him to make him eligible for higher pay scale cannot be given these benefits before the date on which the immediate senior to him gets the eligibility to get the benefits. If what the petitioners' counsel is contending is accepted then the very object and purpose to giving transfer to the petitioners on their request with the loss of seniority will have no significance and purpose. There will not be any loss of seniority as they will get all the benefits. Seniority plays an important role in the service matters and in the matter of benefits to be conferred upon the employees it is one of the important factors to be considered. But here though the petitioners are junior will get the march over the seniors only because of the seniors' fault that they have not to their credit requisite period of services.

6. As a result of the aforesaid discussion, I do not find any substance in any of the contentions of the

learned counsel for the petitioners. It is a case where the respondents have acted very fairly and reasonably and in furtherance of giving the benefit of these resolutions to the persons as per their seniority and eligibility and to avoid the possible grievance of the seniors as well as to avoid the possible chance of pay anomalies in between the pay of the junior and senior.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-